Order dated 5th July 2005

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1746 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHETIVADI UTPADAK BAZAR SAMITI - Petitioner(s)

Versus

YUSUF KHAN IBRAHIM KHAN MALIK C/O BHARTIYA MAZDOOR SANGH - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner No(s).: 1.

MR HARIN P RAVAL for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 05/07/2005

Order dated 5th July 2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and award dated 23rd September 2004 passed by the Labour Court, Bharuch in Reference (LCB) No. 520/2001 by which the Labour Court has partly allowed the aforesaid Reference while quashing and setting aside the action of the petitioner in terminating the services of the respondent with effect from 1.5.1990 and thereby directing the petitioner to reinstate the respondent workman with 20% backwages and continunity in service.

2. The respondent No.1 workman was serving as an Inspector on appointment by the petitioner. His services came to be terminated with effect from 30th April 1990 and the same was without following any procedure as required and even without holding any enquiry as contemplated. The respondent workman raised industrial dispute which was referred to the Labour Court, Bharuch for adjudication which was numbered as Reference (LCB) No. 520/2001 (Old No. 826/1990). The aforesaid Reference was opposed by the petitioner. One

of the reasons for dismissal of respondent workman from service was that according to the petitioner the appointment of respondent workman was not in accordance with the rules and he was not having requisite qualification. Another reason was that due to respondent workman there was a loss to the petitioner and therefore his services being found to be not satisfactory were not required. Considering the evidence on record and considering the fact that the respondent workman was continued to work for 8 years; that it was not open to the petitioner to dismiss the respondent workman on the ground that he was not having requisite qualification; that one another employee whose services were terminated along with the petitioner was already taken on duty; and that no departmental enquiry was initiated against the respondent workman nor even notice was given to the respondent workman, the Labour Court, Bharuch by judgment and award dated 23rd September 2004 partly allowed the aforesaid Reference by directing the petitioner to reinstate the respondent workman with 70% backwages. Considering the reasonings given by the Labour Court and considering the fact that the respondent workman had worked for 8 years on appointment by the petitioner it was not open for the

petitioner to dismiss the respondent from the services on the ground that he was not having requisite qualification at the time when he was appointed, it is necessary to observe here that in fact it was the petitioner who appointed the respondent workman, and therefore it was not open for the petitioner to contend after a period of 8 years that they have committed a wrong. Acceptance of such a contention after a period of 8 years would be giving a premium to the petitioner who themselves may be termed wrong-doers. It is also required to be noted that one another employee, whose services were terminated along with the respondent workman, was already taken back and the respondent workman herein was not taken back on duty. Considering the aforesaid facts and circumstances to the effect that the respondent workman's performance was not satisfactory and no notice was given to the respondent workman to that effect nor any departmental enquiry was initiated the order of dismissal is set aside, it cannot be said that there is any illegality committed by the Labour Court and/or the judgment and award passed by the Labour Court is so perverse which require interference of this Court. So far as the question of payment of backwages is concerned, there is a consensus between the parties that instead of 70% backwages the

same should be substituted as 50% of the total backwages. Under the circumstances, the impugned judgment and award passed by the Labour Court, Bharuch, dated 23rd September 2004 in Reference (LCB) N0. 520/2001 is modified to the aforesaid extent that instead of 70 per cent of the backwages, the respondent workman will be entitled to get 50 per cent of the backwages. Rest of the judgment and award passed by the Labour Court shall remain undisturbed. The petitioner is directed to reinstate the respondent workman as early as possible and preferably within the period of two weeks from the date of receipt of this order and out of 50% of the backwages, the petitioner shall pay 20% of the same within the period of 3 weeks from today and the balance amount of 30% shall be paid by the petitioner to the respondent workman within the period of 3 months thereafter. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

rmr.